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## RESPECT FOR THE HONOR, PRIVACY AND DIGNITY OF THE HUMAN PERSON

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### ABSTRACT

*The right protects the person against the touches brought to his image by the so-called "image right". The man, the natural person enjoys honor and dignity, moral values guaranteed and protected by the legislation in force. Art. 72 of the new Civil Code, related to this right stipulates:*

*(1) Everyone has the right of respect for their dignity.*

*(2) Any prejudice to the honor and reputation of a person without its consent or without respecting the limits provided for in article 75 is prohibited."*

*Romania's constitution at art. 30 paragraph (6), provides: "Freedom of expression cannot harm the dignity, honor, private life of the person nor the right to one's own image." The right of each of us to protect our own image is undoubtedly the fruit of the jurisprudence and the protection is guaranteed both by the fundamental Charter, represented by the Constitution of Romania, as well as by the legal norms of civil law. Legal advisors concluded that the right of each one on our own image is a real, absolute, inalienable right of the holder, called the right to the image. Like the name, the image of the person finds protection as the identifier of the person. The image is a representation of the physical characteristics of the person, it is both a form and a substance, it is an external dimension of the human being. It is a privileged manifestation of personality.*

*This right designates the legal possibility of any natural person to request respect even if judicially of his honor and dignity if they have been violated. Both the honor and dignity have a particular feature which refers strictly to their holder; they also have a social dimension that aims at esteem, consideration and respect for the peers, granted to the holder of these rights. From a judicial point of view, the prejudice of the honor of a natural or legal person bears the name of insult (when the accusations are insulting, offending or when the language is licentious) or of slander (when they refer to certain facts, habits or behaviour of the holder, facts which can be true or not). Slander and insult were sanctioned by article 205 and 206 in the old Criminal Code, as offences, but in the new legislation, they do not represent offences, but are subject to criminal and civil sanctions because the injured party may request moral damages for the damage suffered.*

*In art. 74, the New Civil Code, legally regulates and stipulates the right of any natural person to have his/her private life respected, the right at free speech, at his/her own voice,*

<sup>1</sup> The image derives from the Latin *imago* and Fr. *image*; in a first sense, it evokes the sensory-type reflection of an object in the human mind in the form of sensations, perceptions or representations; (The explanatory dictionary of the Romanian language, Academiei Ed., Bucharest, 1984, p. 415).

*mentioning in this sense that any person has the right to free expression. The exercise of this right can be restricted only in the cases and within the limits provided by law. Everyone has the respect for his/her private life. No one may be subjected to any interference in the personal of family intimate life, nor in the domicile of his/her residence or mailing without his/her consent or without observing the limits provided by law. It is forbidden to use in any way the mailing of the manuscripts or other personal documents<sup>2</sup> as well as of the information in the private life of a person without his/her consent or without observing the legal limits. The following are considered to be detrimental to private life<sup>3</sup>:*

- entering or remaining without right in the house or taking of any object without the consent of the person occupying it legally;*
- the interception without any right of a private call by any technical means, or the use, in knowledge of the cause, of such interception;*
- capturing or using the image or voice of a person in a private space without their consent. broadcasting or displaying of images that present interiors of a private space without the consent of the one who occupies it legally;*
- keeping the private life under observation by any means except the cases expressly provided by law;*
- dissemination of news, debates or written or audiovisual reports on personal or family intimate life without the consent of the person concerned;*
- dissemination of materials containing images regarding a person undergoing treatment in the health care units as well as personal data, diagnostic problems, prognosis, circumstances related to the disease and other various facts including the autopsy result, without the consent of the person concerned;*
- in case the person is dead, without the consent of the family or of the persons entitled; using in bad faith the name, image, voice or likeness of another person;*
- dissemination or use of mailing, manuscripts or any other personal documents, including the data related to the domicile, residence, as well as the phone numbers of a person or of his/her family members, without the prior consent of the person concerned or, according to the situation, without the consent of the person who has the right to dispose of them.*

**KEY WORDS:** *the right to image, the contract of image, the right to private life etc.*

## **1. THE LEGAL REGIME OF ONE'S OWN IMAGE OF THE NATURAL PERSON**

Everyone has the right not to have his image reproduced or published without his/her authorization. As the name, the image of the person finds protection as the identifier of the person. The image represents the physical characteristics of a person; it is both a form and a substance, it is an external dimension of the human being<sup>4</sup>. It constitutes a privileged manifestation of one's personality. The right protects the person against prejudices caused to his/her image by means of the so-called "right to image". In art. 30, paragraph (6), the Romanian Constitution stipulates: "The freedom of speech cannot prejudice the dignity, honor, private life of the person, not the right to his/her own image." The right of every individual to protect his/her image is without any doubts the result of jurisprudence and the

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<sup>2</sup> See provisions of art.71 to 77 of the New Civil Code.

<sup>3</sup> According to provisions of art.74 of the New Civil Code

<sup>4</sup> According to provisions of art.74 of the New Civil Code

## RESPECT FOR THE HONOR, PRIVACY AND DIGNITY OF THE HUMAN PERSON

protection is guaranteed both by the fundamental Chart represented by the Romanian Constitution and by the legal terms of the civil law. Legal advisors have reached the conclusion that the right of every individual over his/her own image represents an extrapatrimonial right, real, absolute, inalienable to its holder, referred to as the right to image. Along the years, several theories related to the right of image have been discussed. Therefore, the copyright idea has been conveyed, being supported by the anglo-american jurisprudence; the basic principle of this idea is the right to multiply it, as the copyright stipulates. Another theory we agree with includes this right in the category of extra-patrimony rights of the human personality, together with the most important and fundamental rights (the right to life, health, integrity, honor etc.).

Analyzing from the perspective of the media examples, in which great sports personalities (and not only) have marketed their own image in the media, we question the extra-patrimony aspect of the right to our own image. Related to this right, in art. 73, the New Civil Code stipulates: "(1) Any person has the right to his/her own image."

(2) In the exercise of the right to his/her own image, the person may prohibit or prevent the reproduction in any way of his/her physical appearance or voice, or, as the case may be, the use of such reproduction." The right of every person to his/her own image, belongs to the right of each of us to respect the rights and freedoms conferred by the Constitution and by the laws in force. In other words, any violation of the right of each of us to his/her own image represents as a consequence, a serious violation brought to these rights. This right has certain limits regarding the public safety measures, the right of public authorities to supervise and video-monitor certain areas or certain institutions.

### 1.1. THE CONTRACT OF IMAGE

Following the rights and freedoms conferred by the legislation in force, the right to image of each holder may be transferred on the basis of the institution of the image contract, for free or for free to be publicized. The personalities from the political, social or private spectrum, artists, athletes, etc. are included in this category. The new Civil Code protects the dignity of the natural person even after his/her death, so art.78 to 80 stipulate that the deceased person must be respected with regard to his/her memory, as well as his/her body.

The memory of the deceased person is protected under the same conditions as the image and reputation of the person in life. Every person can determine the manner of their own funerals and can arrange for his body after death. In the case of those lacking exercise capacity or those with limited exercise capacity, the written consent of the parents or, as the case may be, the guardian is also required. In the absence of the express wish of the deceased person, the will of the spouse, parents, descendants, relatives in the collateral line up to the fourth degree will be respected, including the universal or universal legatees or the disposition of the mayor of the commune, city, municipality or sector of the municipality of Bucharest in whose territorial range the death occurred.

## 2. THE INSTITUTION OF HONOR IN THE LIGHT OF THE NEW CIVIL CODE

The man, the natural person enjoys honor and dignity, moral values guaranteed and protected by the legislation in force. Art.72 of the New Civil Code, regarding this right provides:

(1) Everyone has the right to respect for his dignity.

(2) Any prejudice to the honor and reputation of a person is prohibited, without his/her consent or without respecting the limits provided by art. 75”.

This right designates the legal possibility of any natural person to request even the judicial respect of his honor and dignity if they have been violated. Both the honor and the dignity have a particular character, which refers strictly to their holder, but they also have a social character that concerns the esteem, consideration and respect of the fellow members granted to the holder of these rights. From a legal point of view, the attainment of the honor of a natural or legal person bears the name of insult (when the accusations are offensive, or the language is licentious) or of slander (when they refer to certain facts, customs or behavior of the holder, facts that may be true or not). Calumny and insult were sanctioned by articles 205 and 206 of the old Criminal Code as offenses, but in the new legislation they no longer constitute offenses, but are subject to criminal and civil sanctions, because the injured party can claim material damages for the damage suffered.

### **3. RESPECT FOR THE PRIVACY AND DIGNITY OF THE HUMAN PERSON**

The new Civil Code in art.74, legally regulates the right of any natural person to respect his private life at free speech, at his own voice, mentioning in this sense that every person has the right to free expression. The exercise of this right can be restricted only in the cases and the limits provided by law. Everyone has the right to respect for his private life. No one may be subjected to any interference in the intimate, personal or family life, nor in his/her domicile, residence or mailing, without his consent or without observing the limits provided by law. The use, in any way, of the mailing, manuscripts or other personal documents<sup>5</sup>, as well as of the information in the private life of a person, without his/her consent or without observing the legal limits is forbidden.

The following are considered to be detrimental to privacy<sup>6</sup>:

- a) entering or remaining without rights in the dwelling or taking of any object without the consent of the person occupying it legally;
- b) the interception without right, of a private conversation performed by any technical means or the use, knowingly, of such interception;
- c) capturing or using the image or voice of a person, in a private space, without his/her consent.
- d) dissemination of images presenting interiors of a private space, without the consent of the person who occupies it legally;
- e) keeping privacy under observation, by any means, except in cases expressly provided by law;
- f) dissemination of news, debates, investigations or written or audiovisual reports on intimate, personal or family life, without the consent of the person concerned;
- g) dissemination of materials containing images regarding a person undergoing treatment in health care units, as well as personal data on the status of health, diagnostic problems, prognosis, treatment, circumstances related to the disease and other various facts, including the autopsy result, without the consent of the person concerned, and in case he/she is deceased, without the consent of the family or the persons entitled
- h) the use, in bad faith, of the name, image, voice or likeness of another person;

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<sup>5</sup> See provisions of art.71 to 77 of the New Civil Code.

<sup>6</sup> According to provisions of art.74 of the New Civil Code.

## RESPECT FOR THE HONOR, PRIVACY AND DIGNITY OF THE HUMAN PERSON

i) dissemination or use of mailing, manuscripts or other personal documents, including address, residence and telephone numbers of a person or members of his/her family, without the consent of the person to whom they belong or who, as the case may be, has the right to dispose of them.

It does not constitute an infringement of the rights provided in this section the violations permitted by law or by the international conventions and pacts regarding the human rights to which Romania is a party. The exercise of constitutional rights and freedoms in good faith and in compliance with international pacts and conventions to which Romania is a party does not constitute an infringement of the rights provided in this section. When the person to whom an information or a material refers, makes it available to a natural person or legal person who is aware of his / her activity in the field of public information, the consent for their use is presumed, without a written agreement being required. Any processing of personal data, by automatic or non-automatic means, can be done only in the cases and conditions provided by the special law.

With regard to data, their importance is revealed on the form in which they are stored, while for information, their importance is revealed from the content. Personal data can be aimed at both the natural and the legal person and refers to his/her private life. Personal data is a large and wide category of data and information regarding the privacy of individuals, data and information that may affect the dignity, image and reputation of the owner. Their legal protection is important because their collection starts from birth and extends throughout the life of the holder. Special data are considered those referring to the social or ethnic origin of the holder, those regarding political, religious, philosophical, health status, crime data, genetic, biometric data, etc. It is worth noting Directive 2003/98 / C.E. of the European Parliament of 17.11.2003 regarding the re-use of information in the public sector, with the object of data protection, the right of access and expression. In this sense, the European Parliament provides for the imposition of security conditions for these data when a public authority makes them available to third parties for their commercial reuse.

The European Union Directive no. 95/46 / EC regarding the protection and processing of personal data provides for compulsory principles regarding their processing, such as:

- the principle of data finality, a principle that obliges the user to use the data received only for the purpose initially established and not to modify or replace it except in the case of a legislative change.
- the principle of accuracy, a principle that states that the data processed must be accurate, and updated, and the inaccurate ones must be deleted or updated.
- the principle of proportionality, a principle that implies that the operator in the work should be limited only to those data that are indispensable to achieve the aim pursued.
- the principle of limited preservation, a principle that limits the period of storage (preservation) of data belonging to individuals longer than the normal period and necessary to fulfill the purpose for which they were collected.
- the principle of data security, a principle that provides data protection against all unauthorized processing.
- data transparency, a principle that involves control over one's own data and the right to self-determination and is expressed through what we call information.

## 4. ESSENTIAL POINTS IN THE LOGIC OF THE THEME

- the constitution of romania guarantees in article 30, paragraph 6 the legal protection of their image, the dignity and the private life of the human being.
- the new civil code adopted on 01.10.2011, in art.75 provides the prohibition of prejudicing the honor, reputation, dignity, image and private life of the individual.
- the new civil code, under art. 71 to 77, provides as prejudice to the private life of a person, the following facts:
  - entry or stay without right in the dwelling of a person;
  - interception of private conversations or mailing;
  - capture or use of the image or voice of a person;
  - distribution of images of a private area belonging to a third party, person etc.

## **CONCLUSIONS**

The right of each of us to protect our own image is undoubtedly the fruit of the jurisprudence, and the protection is guaranteed both by the Charter, represented by the Constitution of Romania, and by the legal norms of civil law. The legal advisors concluded that the right of each one on our own image is an extra-patrimonial right, real, absolute, inalienable to its holder, called the right to the image. Like the name, the image of the person finds protection as the identifier of the person. The image is a representation of the physical features of the person; it is both a form and a substance, it is an external dimension of the human being<sup>7</sup>. It is a privileged manifestation of personality. The law protects the person against the prejudices brought to his/her image by the so-called "right to image". The man, the natural person enjoys honor and dignity, moral values guaranteed and protected by the legislation in force. Art.72 of the New Civil Code, regarding this right states: "Everyone has the right to respect for his dignity. Any prejudice against the honor and reputation of a person is prohibited, without his consent or without respecting the limits provided in art. 75 ".

This right designates the legal possibility of any natural person to request even the judicial respect of his honor and dignity if they have been violated. Both the honor and the dignity have a particular character, which refers strictly to their holder, but they also have a social character that concerns the esteem, consideration and respect of the fellow members granted to the holder of these rights. From a legal point of view, the attainment of the honor of a natural or legal person bears the name of insult (when the accusations are offensive, or the language is licentious) or of slander (when they refer to certain facts, habits or behavior of the holder, facts that may be true or not). Calumny and insult were sanctioned by articles 205 and 206 of the old Criminal Code as offenses, but in the new legislation they no longer constitute offenses, but are subject to criminal and civil sanctions, because the injured party can claim material damages for the damage suffered.

The new Civil Code in art.74, legally regulates the right of any natural person to respect for his/her private life at free speech, at his own voice, mentioning in this sense that every person has the right to free expression. The exercise of this right can be restricted only in the cases and the limits provided by law. Everyone has the right to respect for his/her private life. No one may be subjected to any interference in the intimate, personal or family life, nor in his domicile, residence or mailing, without his consent or without observing the

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<sup>7</sup> The image derives from the lat. imago and fr. image; In a first sense, it evokes the sensory-type reflection of an object in the human mind in the form of sensations, perceptions or representations; (The explanatory dictionary of the Romanian language, Academiei Ed., Bucharest, 1984, p. 415)

## RESPECT FOR THE HONOR, PRIVACY AND DIGNITY OF THE HUMAN PERSON

limits provided by law. The use, in any way, of the mailing, manuscripts or other personal documents<sup>8</sup>, as well as of the information in the private life of a person, without his consent or without observing the legal limits is forbidden.

The following are considered to be detrimental to privacy<sup>9</sup>:

- a) entering or remaining without rights in the dwelling or taking of any object without the consent of the person occupying it legally;
- b) the interception without right, of a private conversation performed by any technical means or the use, knowingly, of such interception;
- c) capturing or using the image or voice of a person, in a private space, without his/her consent.
- d) dissemination of images presenting interiors of a private space, without the consent of the person who occupies it legally;
- e) keeping privacy under observation, by any means, except in cases expressly provided by law;
- f) dissemination of news, debates, investigations or written or audiovisual reports on intimate, personal or family life, without the consent of the person concerned;
- g) dissemination of materials containing images regarding a person undergoing treatment in health care units, as well as personal data on the status of health, diagnostic problems, prognosis, treatment, circumstances related to the disease and other various facts, including the autopsy result, without the consent of the person concerned, and in case he/she is deceased, without the consent of the family or the persons entitled
- h) the use, in bad faith, of the name, image, voice or likeness of another person;
- i) dissemination or use of mailing, manuscripts or other personal documents, including address, residence and telephone numbers of a person or members of his/her family, without the consent of the person to whom they belong or who, as the case may be, has the right to dispose of them.

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<sup>8</sup> See provisions of art.71 to 77 of the New Civil Code.